

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROGER ELKINS

Claimant

VS.

SEDGWICK COUNTY

Respondent,
Self-Insured

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Docket No. 248,120

ORDER

Claimant appealed the April 26, 2001 Award and May 4, 2001 Order Nunc Pro Tunc of an Award entered by Administrative Law Judge Jon L. Frobish. The Board scheduled oral argument for October 12, 2001, in Wichita, Kansas. E. L. Lee Kinch of Wichita, Kansas, appeared for respondent. But claimant did not appear either in person or through counsel. Therefore, the Board determined this appeal should be decided by reviewing the parties' submission letters and briefs to the Board.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in both the Award and Order Nunc Pro Tunc.

ISSUES

This is a claim for a retinal detachment in claimant's left eye, which was allegedly caused by heavy lifting at work. In the Award and Order Nunc Pro Tunc, Judge Frobish found that claimant failed to prove that he had sustained personal injury by accident arising out of and in the course of employment. Accordingly, the Judge denied claimant's request for benefits.

Claimant contends Judge Frobish erred. Claimant argues that his eye surgeon, Dr. C. Joseph Beck, initially advised him that the retinal detachment was caused by heavy lifting at work. Claimant also directs the Board to the court-ordered independent medical evaluation of Dr. Kenneth Braun, who also initially related the retinal detachment to claimant's physically demanding work activities. Therefore, claimant argues he should receive benefits for his left eye injury.

Conversely, respondent contends the denial of benefits should be affirmed. Respondent counters claimant's arguments and argues that both Dr. Beck and Dr. Braun modified their initial opinions after considering additional information. Therefore,

respondent contends claimant has failed to establish that his retinal detachment was related to his work activities in any manner.

The only issue before the Board on this appeal is whether claimant's retinal detachment was either caused or aggravated by his work activities.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds and concludes:

The Award and Order Nunc Pro Tunc should be affirmed. The Board agrees with the Judge that claimant has failed to establish that his retinal detachment was caused or aggravated by his work activities. When considering the doctors' final opinions, the record lacks medical expert testimony that links the retinal detachment to claimant's work.

Claimant's eye surgeon, Dr. C. Joseph Beck, initially believed claimant's retinal detachment was caused by claimant's work. But the doctor later reversed that opinion and explained that he had erroneously believed claimant had sustained a trauma to the head.

Dr. Kenneth Braun, whom the judge selected for evaluating claimant, initially related claimant's work activities to the retinal detachment. But Dr. Braun changed his opinion and concluded that claimant's lifting at work did not cause or aggravate the retinal detachment after reviewing both Dr. Beck's deposition testimony and a report from Dr. Keith A. Warren, a retinal specialist. In reversing his earlier opinion, Dr. Braun deferred to Dr. Warren's greater expertise in these matters, and stated:

... [Dr. Warren] is a fellowship-trained retinal specialist, and I am not. I also -- he has reviewed the literature on this matter in a far more intensive and comprehensive way than I ever have. And based on his training and experience in this field and review of the literature, I am prepared to defer to his expertise in this matter, as he represents a higher authority.¹

Dr. Warren is a board-certified ophthalmologist and the chairman of the ophthalmology department at the University of Kansas Medical Center, School of Medicine. The doctor focuses his medical practice on patients with retinal disease and retinal detachments. After evaluating claimant, the doctor concluded claimant's lifting at work neither caused nor contributed to the retinal detachment. Instead, the doctor attributed the detachment to claimant's three preexisting risk factors -- retinal thinning, previous cataract surgery, and nearsightedness. Dr. Warren testified, in part:

Q. (Mr. Kinch) Okay. Did you arrive at an opinion concerning the question of causation?

A. (Dr. Warren) I did. And it is my professional opinion that Mr. Elkins's retinal detachment is due to the risk factors that he has, that is retinal

¹ Deposition of Dr. Kenneth Braun, March 19, 2001; p. 8.

thinning, previous cataract surgery and nearsightedness. Those, by far, are the most overwhelming risk factors in development of retinal detachment. There is no literature which I am aware that suggests heavy lifting of any sort is a significant risk factor for retinal detachment.

Q. And, Doctor, would the corollary of that opinion be that the lifting episode did not cause or contribute to the retinal detachment?

A. That is correct.²

Dr. Dasa V. Gangadhar, who is a corneal transplant specialist, also testified in this claim. But the doctor did not have an opinion concerning the cause of claimant's retinal detachment.

Considering the greater weight of the evidence, claimant's request for benefits should be denied.

AWARD

WHEREFORE, the Board affirms the April 26, 2001 Award and the May 4, 2001 Order Nunc Pro Tunc of an Award entered by Judge Frobish.

IT IS SO ORDERED.

Dated this ____ day of October 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Roger Elkins, 3916 Wesley Drive, Wichita, KS 67227
Sean C. Brennan, Attorney for Claimant
Joni J. Franklin, Attorney for Claimant
E. L. Lee Kinch, Attorney for Respondent
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Workers Compensation Director

² Deposition of Dr. Keith A. Warren, March 2, 2001; p. 15.